U.S. Department of Labor
Office of Administrative Law Judges
603 Pilot House Drive, Suite 300
Newport News, Virginia 23606-1904
(757) 873-3099
(757) 873-3634

Date: April 28, 1998

In the matter of:

THEODORE FAULK,
Claimant,

v.

NEWPORT NEWS SHIPBUILDING
AND DRY DOCK COMPANY,
Employer

and

NORFOLK SHIPBUILDING
AND DRYDOCK CORPORATION,
Employer,

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
Party-in-interest.

Gary R. West, Esq.
for Claimant

Benjamin M. Mason, Esq.
for Newport News Shipbuilding
and Dry Dock Company

Gerard F. Voyer, Esq.
for Norfolk Shipbuilding
and Drydock Corporation

LuAnn Kressley, Esq.
for Director, Office of Workers'
Compensation Programs

Before: DANIEL A. SARNO, JR.
Administrative Law Judge

DECISION AND ORDER

This proceeding arises fr0om a claim under the Longshore and Harbor Workers' Compensation Act ("the Act")

33 U.S.C. 901 et seq. A formal hearing was held in this case on October 1,1997 in Newport News, Virginia Claimant offered exhibits CX-I through CX-5.[1] Newport News Shipbuilding and Dry Dock Company (NNS) offered exhibits NNS- 1 through NNS-5. Norfolk Shipbuilding and Drydock Corporation (Norshipco) offered exhibits NOR-I through NOR-22).[2] All were admitted into evidence All parties filed post-hearing briefs The findings and conclusions which follow are based on a complete review of' the entire record in light of the arguments of' the parties, applicable statutory provisions, regulations, and pertinent precedent.

STIPULATIONS

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[1] The following abbreviations will be used as citations to the record.

CX - Claimant's Exhibits

NNS - Newport News Shipbuilding and Dry Dock Company's Exhibits

NOR - Norfolk Shipbuilding and Drydock Corporation's Exhibits

DX - Director, Office of Worker's Compensation Programs' Exhibits

TR - Transcript.

[2] Post-hearing, Norshipco submitted portions of Chapter 635 of the Naval Ships' Technical Manual (NSTM). No objection was made to the receipt of the document. It is admitted into evidence as NOR 23.

Claimant, NNS and Norshipco stipulated to and I find the following facts.

1. Claimant was employed by NNS from January 29, 1973 until November 30, 1 978.

2. Claimant employed by Norshipco as a shipfitter from November 29, 1978 until November 27, 1996.

3. Throughout his at NNS, Claimant performed work related to ship construction and repair aboard ships of the navigable waters of the James River and/or piers and dry docks adjacent thereto.

4. Throughout his employment at Norshipco, Claimant performed work related to ship repair aboard ships on the navigable waters of the Elizabeth River and/or piers and dry docks adjacent thereto.

5. NNS is in the business of constructing and repairing oceangoing vessels.

6. Norshipco is in the business of repairing oceangoing vessels.

7. On November 27, 1996, Claimant was diagnosed with peritoneal mesothelioma by Dr. Kevin Wilson. This

mesothelioma was caused, at least in part, by his exposure to airborne asbestos dust and fibers.

8. Claimant is permanently and totally disabled from November 27, 1996 to Pie present and continuing as a result of mesothelioma.

9. Norshipco has paid no disability compensation to Claimant and no medical expenses to Claimant pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act ("LHWCA" or the "Act").

10. If Norshipco is determined to be the Employer responsible for payment of benefits in this matter pursuant to the provisions of the LHWCA, it is entitled to credit for the net amount of all settlement proceeds received by and/or on behalf of' Claimant for the Manville Settlement Trust in the amount of $20,000.00 and for the Center for Claims resolution for $20,000.00 and for all settlements obtained to date.

11. The average weekly wage applicable to this matter is $640.08, yielding a total disability compensation rate of $426.72.

(TRI-2- 14)

ISSUES

1. Did Claimant sustain his last injurious exposure at NNS or Norshipco?

2. Is the responsible Employer entitled to relief under Section 8(f) of the Act?

FINDINGS OF FACT

1. Claimant worked at NNS as a shipfitter from January 1973 to November 1978. Eighty percent of Claimant's work at NNS was new construction of U. S. Navy ships. While working at NNS, Claimant was exposed to asbestos when using asbestos cloth and when working around other shipyard trades which generated asbestos dust while performing their duties.[3] Claimant did not often wear a respirator at NNS (TR 35-37,47-48,51). According to Claimant, new construction work did not generate nearly the amount of dirt and dust generated in ship repair work, the type of work he later did at Norshipco (TR44; EX-1, pp.8-9).

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[3] Claimant made clear from the beginning that he had no specific expertise in recognizing asbestos or asbestos products. I find his testimony very credible. His testimony concerning the presence of asbestos while working for both employers was based upon instances when he was specifically told that asbestos was present. NNS did not dispute that Claimant was exposed to asbestos while working there.

2. Claimant began working at Norshipco as a shipfitter in November 1978 and continued working there until November 1996 His work consisted primarily of repair work both on U.S. Navy and commercial vessels As before, Claimant could specifically state from his own expertise that he worked with asbestos or around others who worked with asbestos; however, his general belief was that during his years with Norshipco, many of the ships he worked On contained asbestos (TR 39-40). He noted that it was the practice of Norshipco to close off areas of ships where asbestos removal was taking place. Claimant did specifically recall one occasion in 1996. while working on the USS Flint, that an asbestos-insulated pipe covering was ruptured in a compartment undergoing extensive repair work in the vicinity of where he was working. Claimant had been working in and around that compartment for a number of days. After the rupture., Claimant was actually permitted to enter that compartment twice that day to pick up and drop off his tools. There is no evidence in the record that any steps were taken to in any way close off the compartment immediately after the rupture. Only after Claimant's shift ended did testing by Norshipco reveal that the ruptured pipe covering contained asbestos (TR 63-67; EX-l, p. 35), Because of the generally dusty conditions inherent in ship repair work, Claimant usually wore a respirator while working at Norshipco. However, he conceded that he would not wear a respirator constantly during any given eight hour shift. He did not necessarily wear a respirator when dusty work was being performed or when other trades were working with insulation

(TR67). Specifically referring to the incident aboard the USS Flint, Claimant stated, "if you're asking me did I have a respirator on at the time the pipe was ruptured, no, 1 didn't have a respirator on" (TR68).[4] However, Claimant did recall wearing a respirator when he actually entered the compartment to pick up and return his tools (NNS -1, pp. 37-38).

3. Claimant specifically recalled working on the following U.S. Navy ships at Norshipco: the USS Briscoe, the USS Coronado, the USS Detroit and the USS Josephus Daniels (TR 52, 54-55; NNS -3a,b,d). Claimant believed that he might have been exposed to asbestos on these ships also (TR 50). On such ships, Claimant was involved with such work as chipping and ripping out the flooring. This was very dusty work. Claimant later learned that such floor tiles could have contained asbestos. He also worked around others who were tearing out and replacing insulation. This work was also dusty. He also later learned that such insulation aboard U S Navy ships could have contained asbestos (TR58-63).

4. Daniel F. Harrington, a senior industrial hygienist at NNS. is responsible for program development and regulatory

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[4] Norshipco offered no evidence to contradict Claimant's testimony regarding either Norshipco's positive testing for asbestos or Claimant's version of the incident in 1996 aboard the USS Flint.

oversight.[5] His duties include regulatory oversight in the area of asbestos at NNS (TRB2-85). Mr. Harrington stated that asbestos was widely used in the shipbuilding industry, especially in older ships built prior to 197 l (TR86). Asbestos was used widely in various shipboard materials including gaskets, thermal insulation cloth, floor tiles, underlayerment (leveling compounds used under floor tiles), floor tile cement, friction materials (anchor windlass break shoes), various bulkhead tapes and pipe hanger wrap (TR89-91) Mr. Harrington relied upon Section 635-10.8 (Background) of the Naval Ship's Technical Manual (May 15,1986), which states:[6]

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[5] Program development consists of developing procedures, modifying procedures and making sure that the procedures that are in effect are maintained up to date with current law and science. Regulatory oversight consists of ensuring that NNS stays cognizant of the current laws and regulations (TR 82).

[6] Norshipco submitted an April 1994 change to that manual which purports to delete and replace major portions of that manual including Section 635.10.8 (NOR 23)> Norshipco did not submit what the changes were. Norshipco implies that the above background factual history is no longer valid because various changes were made to Section 10 which is titled Safety and Health Requirements, Removal Procedures, Control Measures, Environmental Monitoring, Medical Surveillance and Training. I will draw no such inference. Rather, I will draw the inference that whatever changes were made applied to changes in requirements procedures, measures, surveillance and training.

> Before 1971, nearly all thermal insulation used on Navy ships was asbestos, From 1971 to 1973, low asbestos materials (about 20 percent asbestos by weight) were specified to reduce the asbestos exposure hazard. Beginning in 1974, asbestos-free thermal insulation materials were specified for all services except pipe hanger liners. Many new construction, ships under construction in 1974 and later years, were already insulated with asbestos thermal insulation products and could not be reinsulated without enormous cost, ship delay, and asbestos exposure to insulation workers. As a result, most new ships commissioned through 1976 are equipped with some asbestos thermal insulation. Since 1974, most thermal insulation has been repaired with asbestos-free materials.
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> (EX-4)

5. Mr. Harrington confirmed that the USS Josephus Daniels and the USS Coronado were constructed before 1971

History cannot be deleted with a stroke of a pen. Mr. Harrington was a credible witness; consequently, I will rely upon his testimony as supported by Section 635.10.8 as written prior to the 1994 changes.

when asbestos was generally used aboard Navy ships.[7] Mr. Harrington found it unlikely that all asbestos had been removed from these ships prior to Claimant working aboard them. He explained that he has never known the Navy to engage in the mass removal of asbestos from its ships. Rather, the Navy tries to limit asbestos removal as much as possible, It tries to remove only what needs to be removed to complete a specific job. (TR124). Mr. Harrington stated that in the mid-I 970's, the shipbuilding industry became aware that asbestos was harmful. There was a concerted effort made in the shipbuilding industry to start eliminating the use of asbestos. Although asbestos still has limited applications, such as with gaskets and valve packets, there is no large exposure to asbestos when using those materials, Large exposure to asbestos would primarily be associated with removal of asbestos containing thermal insulation materials today (TR 106). Employer offered no contrary evidence to refute Mr. Harrington's testimony.

6. In November, 1996, Claimant learned from his treating physician, Dr. Wilson, that he had an asbestos related problem. Claimant has not worked since then. (NNS-1, pp.40-

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[7] Mr. Harrington referred to Jayne's Fighting Ships and determined that two of the ships listed by Claimant were built before 1971. The USS Josephus Daniels was built by Bath Iron Works of Bath Maine and launched in December 1963. The USS Coronado was built by Lockheed Shipbuilding Construction Corporation and launched in July 1966 (TR 91-93).

41). On November 25, 1996, based upon pathological review, Claimant was diagnosed with well- differentiated papillary mesothelioma (CX-5a; DX-l 13) This diagnosis was confirmed by Dr. Steinberg following an examination on December 2, 1996 (NOR-20). Dr. Steinberg found no pleural mesothelioma. Nor did Dr. Steinberg find any significant prior medical condition. On February, 19, 1997, Dr. Wilson found Claimant totally and permanently disabled from malignant mesothelioma of the abdominal peritoneum (CX-4). The mesothelioma was caused at least in part by asbestos exposure (CX-3A; NOR-21,22).[8] Dr. Steinberg noted that Claimant's asbestos exposure occurred from working around asbestos for many years without wearing protective clothing (NOR-20). Dr. Fairman reviewed the medical records and acknowledged that Claimant had been exposed to asbestos at both NNS and Norshipco, however, Dr. Fairman opined that Claimant's exposure at Norshipco was very limited and the majority of Claimant's exposure was at NNS.[9] He

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[8] Dr. Fairman is a Board Certified Internist with a sub-specialty in Pulmonary Medicine (CX-3B). Dr. Steinberg is a hematology-oncology specialist (NOR-20). Dr. Seal is a Board Certified pathologist (NOR-21). Dr. Kloss is a pathologist (NOR-22).

[9] Dr. Fairman appears to base this solely upon Claimant's deposition testimony and answers to interrogatories which equivocated about asbestos exposure at Norshipco due to Claimant's inability to identify asbestos.

further stated that peritoneal mesothelioma generally develops 35-40 years after initial exposure to asbestos; however he conceded that it could develop in some cases less than twenty after initial exposure. Dr. Fairman did not believe that Claimant's disease was caused by his asbestos exposure on the USS Flint. He opined that Claimant's exposure many years prior at NNS caused Claimant's disease (CX-3A).

7. Dr. Schwartz, a Board Certified Internist with a sub-specialty in Pulmonary Medicine,[10] reviewed the medical records and opined on July 21, 1997:

> I am in receipt of your July 10,1997 letter asking for my opinion regarding the medical records on the above individual. Given the medical records, it does not appear that Mr. Faulk had any pre-existing conditions that would contribute to his current bleak prognosis or level of impairment. There is no evidence that he had or has asbestos-induced Jung disease other than his mesothelioma. In fact, the CT scan of the thorax obtained by Dr. Steinberg on Dec. 5, 1996 indicates that he has bilateral basilar atelectasis. This is clearly distinguishable from asbestos-induced pulmonary fibrosis and also asbestos-

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[10] DX2-14.

> induced pleural fibrosis. The absence of radiographic features of asbestos-induced lung disease and his young age suggest that his impairment is primarily due to expansion of his abdominal contents which prevent him from taking a full inspiratory breath. In fact, it is common for individuals with ascites to have basilar ateleclasis because of the inability to inhale fully. Thus, I believe that Mr. Faulk has a mesothelioma but does not have evidence of any other form of asbestos-induced lung disease that predated or antedated the diagnosis of his mesothelioma.
> (DX-1)

8. Dr. Carr, a radiologist, read a September 30, 1996 chest x-ray. He observed "some linear atelectasis or scarring is noted in the vicinity of the left costophrenic angle." (DX-19, 23, 37; NNS-2e). Dr. Carr characterized the x-ray as showing "no acute cardiopulmonary abnormality. Dr. Reid, a NNS clinic physician, reviewed Dr. Carr's x-ray report and concluded that linear atalectasis or scarring causes permanent lung impairment and that "a cautious employer would not hire a worker for heavy and at times dusty manual labor, such as that at the Shipyard, if

he had a diagnosis of lung scarring."(NNS -2c-d, DX-2 1-22).[11] He further opined that "Mr. Faulk's lung impairment, AMA rating and disability are materially and substantially contributed to, materially and substantially hastened by, and materially and substantially caused by his pre-existing lung scarring disease. If Mr. Faulk merely had mesothelioma, his AMA rating would be at least 5% less." (N7NS -2c-d; DX-21-22).

DISCUSSION

The Responsible Employer Issue

The parties agree that Claimant has established a *prima facie* ease of a causal relationship between his asbestos exposure and his peritoneal mesothelioma. The burden shifts to the employer to rebut the Section 20(a) presumption by establishing that a claimant was exposed to asbestos with a subsequent employer. In such occupational disease, the controlling law regarding last responsible employer is set forth in Traveler's Ins. Co. v. Cardillo, 225 F.2d 137 (2d Cir. 1955), cert. denied, 350 U.S. 913 (1955). The last employer rule states that the responsible employer is the employer who last exposed the employee to the injurious stimuli prior to the date upon which the employee was aware or should have been aware of the

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[11] Dr. Reid is Board eligible in Internal Medicine and Hematology/Oncology (DX315-319).

relationship between the disability, disease, and employment.

Norshipco argues that there has been no showing that Claimant was exposed to asbestos at Norshipco. Moreover, Norshipco argues that even if asbestos exposure has been shown at Norshipco, the exposure was minimal and not in sufficient quantities to cause Claimant's disease. Todd Pacific Shipyards Corp. v. Director, OWCP, (9th Cir. 1990) ("Picinich"). I find no merit in either argument. First, I find that the weight of the credible evidence establishes that Claimant was exposed to asbestos while working at Norshipco. Claimant was a very credible witness. He did not pretend to be an expert in identifying asbestos. Claimant took great pains to make clear that he would only state that he had been exposed to asbestos if specifically told so. He truthfully testified that while he believed that he possibly worked on numerous ships at Norshipco from 1978 through 1996 which exposed him to asbestos, he could only recall one incident in 1996 aboard the USS Flint where he was told that asbestos was present. At that lime, he had been working in and around a particular compartment for several days. Indeed, he even stored his tool box in that compartment. One day, Claimant became aware that pipe insulation had ruptured in that compartment. On that day, after the rupture, Claimant was still permitted to enter that compartment twice to pick up and return his tools. The following day, Claimant learned that testing by Norshipco showed that the ruptured insulation had contained asbestos. There is no indication that the compartment was closed

off before or after the rupture. Although Claimant had worn a respirator while in that compartment on that day, there is no evidence that Claimant wore a respirator while working around that compartment after the rupture on that day. Rather, Claimant noted that he had not been wearing his respirator while working around that compartment at the time the rupture occurred. Claimant also noted that he did not normally wear a respirator during an entire eight hour shift. Dr. Steinberg noted that asbestos exposure can occur by not wearing protective clothing while working around asbestos; he also noted that Claimant did not wear protective clothing during the years he was exposed to asbestos. Norshipco offered no evidence to contradict Claimant's assertions concerning his exposure to asbestos aboard the USS Flint in 1996. I find sufficient evidence in the record to conclude that Claimant has established asbestos exposure at Norshipco at least one specific time in 1996.

The credible testimony of Mr. Harrington as supported by Section 635-10.8 of the Naval Ship's Technical Manual (May 13,1986) helps to generally buttress Claimant's testimony that he may well have been exposed to asbestos at other times while performing repair work at Norshipco on various Navy ships from 1978 to 1996. Claimant has shown that at least two Navy ships he worked on were built before 1971. Ships built prior to that date used asbestos for nearly all thermal insulation. Asbestos was also widely used in other shipboard materials such as gaskets, cloth, floor tiles and cement, friction materials, bulkhead tape

and pipe hanger wrap. While Claimant described ship repair work as generally dusty, the evidence is insufficient for me to draw the inference that Claimant was exposed to asbestos on either of these ships. Even though asbestos may well have been present on these ships, there is evidence in the record that by the mid 1970's the industry was well aware of the hazards of asbestos. Claimant did not begin to work for Norshipco until 1978. Even Claimant agreed that Norshipco would generally try to close off areas where asbestos was being removed. Without more, I will not infer that Claimant was exposed to asbestos at Norshipco at any time other than the incident aboard the USS Flint in 1996.

Norshipco's reliance on Picinich, supra, is misplaced. Only the Ninth Circuit holds that minimum exposure to asbestos is not sufficient and that a claimant's employment must have exposed him to injurious stimuli in sufficient quantities to cause the disease. Under the Cardillo, rule, NNS must only show that Norshipco was the last place where Claimant worked where he was exposed to asbestos. NNS has proven subsequent exposure at Norshipco. I conclude that since NNS has proven that Claimant had subsequent asbestos exposure at Norshipco under the Cardillo rule, Norshipco is the responsible employer and is liable for Claimant's permanent total disability benefits, medical costs and all other associated costs.

Section 8(f)

Section 908(f) of the Act limits an employer's liability for compensation payments for permanent total disabilities when the claimant had a pre-existing permanent partial disability, and the disability which exists after the work-related injury is "found not to be due solely" to that injury. See Lawson v. Suwanee Fruit & S.S. Co. 336 US. 198, 200 (1949), This section was designed to remove an employer's financial incentive to discriminate between able-bodied and partially disabled workers in its hiring practices. See Director, OWCP v. Newport News Shipbuilding, 737 F.2d 1295, 1297-1298 (4th Cir. 1984). In such cases where the employer is entitled to Section 8(f) relief, the employer's liability is transferred to the Special Fund administered by the U.S. Department of Labor. I find the evidence insufficient to establish either that Claimant had a pre-existing permanent partial disability or that Claimant's second injury alone was not sufficiently debilitating to have caused permanent total disability.

For the employer to qualify for relief under the Special Fund, the employee must have had an existing permanent partial disability at the time of the injury in question. The term disability in Section 8(f) is not limited to an economic disability under Section 8(c)(21) or one of the scheduled losses specified in Section 8(e)(1)-(20). Disability for purposes of Section 8(f) also encompasses those cases in which an employee has a serious physical disability that would motivate a cautious employer to

dismiss the employee because of' a greatly increased risk of employment-related accident and compensation liability. C&P Telephone Co. v. Director, OWCP, 564 P.24 503, 533 (D.C. Cir. 1977); Coronetz v. Pacific Fisherman, Inc., 11 B.R.B.S. 175, 177-78 (1979). The mere fact of a past injury does not establish disability; there must exist as a result, some serious and lasting physical problem. Director, OWCP v. Belcher Erectors, 17 B.R.B.S., 146, 149(CRT) (1985). This physical problem must in some way affect the employee's ability to function. General Dynamics Corp. v. Sacchetti, 681 F.2d 37 (1st Cir. 1982). Employer maintains that Claimant's September 30, 1996 chest x-ray, read by Dr. Carr, demonstrated a manifest pre-existing disability in the form of lung scarring. Dr. Reid, a NNS clinic physician, opined that this x-ray demonstrated a permanent and serious condition, the knowledge of which would cause a prospective employer not to hire Claimant. Unfortunately, Dr. Reid failed to reconcile Dr. Carr's opinion that the noted scarring did not constitute an acute pulmonary abnormality. While Dr. Reid is Board eligible in Internal medicine, there is no evidence that he is Board eligible in the sub-specialty of Pulmonary medicine, On the other hand, Dr. Schwartz is a Board Certified Internist with a sub-specialty in Pulmonary Medicine. Dr. Schwarz reviewed the medical evidence and agreed that Claimant had atelectasis or scarring of the lungs. However, he opined that it did not contribute in any way to Claimant's level of impairment. He believed that Claimant's total disability was caused solely by Claimant's abdominal mesothelioma.

According to Dr. Schwartz, any breathing difficulty or impairment was due solely to expansion of Claimant's abdominal contents against Claimant's lungs. I find his opinion well reasoned and based on the objective medical evidence. I give his opinion, as that of an expert in the field of pulmonary evidence, compelling weight. Thus, Norshipco has failed to show that Claimant had a pre-existing permanent partial disability.

Norshipco has also failed to prove that Claimant's subsequent injury alone would not have caused Claimant's total permanent disability. See Director, OWCP v. Luccitelli, 964 F2d. 1303, 1306, 26 B.R.B.S. 1 (CRT) (2d Cir. 1992). The United States Court of Appeals for the Fourth Circuit agreed that the "but for" test outlined by the Second Circuit in Luccitelli is also applied in the Fourth Circuit. See Director, OWCP v. Norfolk Shipbuilding and Drydock Corporation, 131 F.3d 1079 (4th Cir. Nov. 17, 1997); see also Maryland Shipbuilding v. Director, OWCP, 618 F2d. 1082 (4th Cir 1980). Since 1980, the Fourth Circuit has held that Section 8(f) is intended to protect employers from paying total disability compensation for an injury that would have been a partial disability "but for" pre-existing conditions. Again, Norshipco relies solely on the opinion of Or. Reid which states that "Mr. Faulk's lung impairment, AMA rating and disability are materially and substantially contributed to, materially and substantially hastened by, and materially and substantially caused by his pre-existing lung scarring disease. If Mr. Faulk merely had mesothelioma, his AMA rating would be

at least 5% less." I give this opinion little, if any, weight. First, Dr. Reid is not a pulmonary specialist. He appears to be characterizing Claimant's mesothelioma as being in Claimant's lungs rather than in Claimant's abdomen. Virtually every other physician has found abdominal mesothelioma with no pleural involvement, Dr. Reid then opines that 5% of Claimant's pulmonary impairment is due to lung scarring disease rather than mesothelioma which causes the remainder of Claimant's totally disabling pulmonary impairment. Dr. Schwartz, a pulmonary specialist, agrees with the other physicians that Claimant's mesothelioma is not pleural. Moreover, Dr. Schwartz can find no pulmonary impairment related to Claimant's lung scarring. Any pulmonary impairment would be from pressure upon the lungs from expansion of abdominal contents caused by the mesothelioma. Dr. Wilson, Claimant's treating physician found Claimant totally disabled due solely to his mesothelioma. Thus I find that Norshipco has failed to show that Claimant's mesothelioma alone would not have caused total permanent disability under the "but for" standard. Accordingly, Norshipco is not entitled to Section 8(1) relief.

ORDER

It is hereby ORDERED that;

1. Norfolk Shipbuilding and Drydock Corporation shall pay to Claimant, Theodore Faulk, permanent total disability

benefits in the amount of $426.72 per week from November 29, 1996, to the present and continuing.

2. Pursuant to Section 7 of the Act, Norfolk Shipbuilding and Drydock Corporation shall compensate Claimant for all medical bills in the treatment of his disability.

3. Interest at the treasury-bill rate specified in 28 U.S.C § 1961 in effect when this Decision and Order is filed with the Office of the District Director shall be paid on all accrued benefits computed from the date each payment was originally due to be paid. See Grant v. Portland Stevedoring Co., 16 B.R.B.S. 267 (1984).

4. Norfolk Shipbuilding and Drydock Corporation is entitled to credit for the net amount of all settlement proceeds received by and/or on behalf of Claimant for the Manville Settlement Trust in the amount of $20,000.00 and for the Center for Claims Resolutions for $20,000.00, and for all settlements obtained to date.

5. All computations are subject to verification by the District Director.

6. Counsel for Claimant shall, within thirty days of the date of this decision and order, submit a fully-supported petition for approval of a representative's fee. See 33 U.S.C. 928; 20

C.F.R 702.132. A copy of such petition shall be served on all parties, including Claimant. The parties shall respond with objections thereto, if any. within ten days from the date on which the petition is filed.

DANIEL A. SARNO, JR.
Administrative Law Judge

DAS
Newport News, Virginia

U.S. Department of Labor
Office of Administrative Law Judges
603 Pilot House Drive, Suite 300
Newport News, Virginia 23606-1904
(757) 873-3099
(757) 873-3634

DATE: April 28, 1998

MEMORANDUM FOR:
B.E. Voultsides
District Director
U.S. Department of Labor
Room 212, Federal Building
200 Granby Mall
Norfolk, Virginia 23510

FROM:
Daniel A. Sarno, Jr.
Administrative Law Judge

SUBJECT:

Case Name:	Theodore Faulk v. Newport News Shipbuilding and Dry Dock Company, Norfolk Shipbuilding and Drydock Corporation and Director, OWCP
Case Nos:	97-LHC-1216 & 97-LHC-1496
OWCP Nos:	5-100463 & 5-100464

Pursuant to Section 702.349 of the rules and Regulations governing the Longshore and Harbor Workers' Compensation Act, I am transmitting herewith my signed DECISION AND ORDER in the above-referenced case.

It is my understanding that service of the Decision upon the parties is to be undertaken by your office.

DAS/jbm (Enclosure)

cc: Theodore Faulk (w/o enclosure)
Gary R. West, Esq. (w/o enclosure)
Benjamin M. Mason, Esq. (w/o enclosure)
Gerard E. W. Voyer, Esq. (w/o enclosure)
LuAnn Kressley, Esq. (w/o enclosure)
Joseph Olimpio (w/o enclosure)

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Office of Workers' Compensation Programs
Division of Longshore and Harbor Workers' Compensation

May 1, 1998 File No.: 5-100463 and 5-100464
RE: Theodore Faulk v. Newport News Shipbuilding and Dry Dock Company and Norfolk Shipbuilding & Drydock Corp. and Director, OWCP

Mr. Theodore Faulk
Newport News Shipbuilding and Dry Dock Company
Richard-Flagship Services, Inc.
Mr. Gary West, Attorney at Law
Mr. Benjamin M. Mason, Attorney at. Law
Mr. Gerard E. W. Voyer, Attorney at Law

The enclosed DECISION AND ORDER of the Administrative Law Judge is hereby served upon the parties to whom this letter is addressed. The decision was based on all of the evidence of record, including testimony taken at a formal hearing, and on the assumption that all available evidence has been submitted.

The transcript, pleadings, and compensation order have

been dated and filed in the District Director's office. Procedures for appealing are described on the attached.

The employer/insurance carrier is hereby advised that if the Order awards compensation benefits, the filing of an appeal does not relieve that part of the obligation of paying compensation as directed in this order. The employer/insurance carrier is also advised that an additional twenty percent (20%) is added to the amount of compensation due if not paid within ten (10) days, notwithstanding the tiling of an appeal, unless an order staying payments has been issued by the Benefits Review Board, U.S. Department of Labor, Suite 757, 1111 - 20th Street, N.W., Washington, D.C., 20036.

Sincerely,

B.E. Voultsides
District Director
Enclosures

BEV/prh

CERTIFICATE OF FILING AND SERVICE

I certify that on May 1, 1998, the foregoing COMPENSATION ORDER was filed in the office of the District Director, Fifth Compensation District and a copy thereof was mailed on said date by certified mail to the parties and their representatives at the last known address of each as follows;

Mr. Theodore Faulk
Post Office Box 5102
Portsmouth, Virginia 23703
Claimant

Newport News Shipbuilding and Dry Pock Company
4101 Washington Ave.
Newport News, Virginia 23607
Self-insured Employer/Insurance Carrier

Richard-Flagship Services, Inc.
Post Office Fox 1560
Norfolk, Virginia 23502
Carrier for Norfolk Shipbuilding

Mr. Gary R. West, Attorney at Law
12350 Jefferson Avenue, Suite 360
Newport News, Virginia 23602
Representative for Claimant

Mr. Benjamin N. Mason, Attorney at law
11742 Jefferson Ave., Suite 260
Newport News, Virginia 23606
Representative for Employer/insurance Carrier/NNSBDDCO

Mr. Gerard E. W. Voyer, Attorney at Law
Post Office 3490
Norfolk, Virginia 23530
Representative for Employer/Carrier/Norshipco

A copy was also mailed by regular mail to the following;

Judge DANIEL A. SARNO, JR.
Office of Administrative Law Judges
U.S. Department of Labor
Washington, D.C. 20210

Associate Solicitor of Labor for Employee Benefits
U.S. Department of Labor
Suite S-4325
NDLB
Washington, D.C., 20230

B.E. Voultsides, District Director
Fifth Compensation District

U.S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs

LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, AS EXTENDED

A petition for reconsideration of a decision and order must be filed with the Office of Administrative Law Judges, U.S. Department of Labor, Washington, P.C., 20210, within ten (10) clays from the date the District Director tiles the decision and order in his/her office.

Any notice of appeal shall be sent by mail or otherwise presented to the Clerk of the Benefits Review Board in Washington, D.C., within thirty (30) days from the date upon which a decision and order has been filed in the Office of the District Director, or within thirty (30) days from the date final action is taken on a timely petition for reconsideration. If a timely notice of appeal is filed by a party, any other party may initiate a cross-appeal or protective appeal by filing a notice of appeal within fourteen (14) days of the date on which the first notice of appeal was filed or within the thirty (30) day period described above, whichever period expires last. A copy shall be served upon the District Director and on all parties by the party who files a notice of appeal. Proof of service shall be included with the notice of appeal.

The date compensation is due is the date the District Director files the decision and order in his/her office.